

**MINUTES OF THE
LAND RECLAMATION COMMISSION MEETING**

November 17, 2004

Chairman Jim DiPardo called the meeting to order at 10:00 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

Commissioners Present: Jim DiPardo; Mimi Garstang; Bob Ziehmer; and Dr. Gregory Haddock.

Staff Present: Larry Coen; Tom Cabanas; Richard Hall; Mike Larsen; Richard O'Dell; Larry Hopkins; Andy Reed; Mike Mueller; Bill Zeaman; and Shirley Grantham.

Others Present: Rich AuBuchon, Attorney General's Office; Perry Pursell, Office of Surface Mining; Jim Rolls and Dan Upp, Associated Electric Coop., Inc.; Steve Rudloff, Missouri Limestone Producers Association; Bill Dawson, Wm. D. Dawson Inc., Lee Powell, Continental Cement Company; Cheryl Hoffman; Curtis Heider, Environmental Engineering Consultants; Anthony Parrish, Nestle Purina; Mikel C. Carlson, Gredell Engineering; Daniel R. Schuette, Air and Land Protection Division, Department of Natural Resources; Omer Roberts, Outreach and Assistance Center, Department of Natural Resources; and Mike Kufrovich and Tommy Crouch, Capital Quarries.

1. MINUTES OF THE SEPTEMBER 23, 2004, MEETING

Dr. Haddock made the motion to approve the Minutes as written. Mr. Ziehmer seconded; motion carried unanimously.

2. ABANDONED MINE LAND ACTIVITIES

AML Status Report (Attachment 1). Mr. Cabanas stated that regarding "project updates," the earthwork has been completed at the Perche Creek Project, with only some tree planting left to be done. At the Miller's Creek Project, work consisted of pumping out acid water and filling in the two pits that held acid water; the contractor is now ready to grade the spoil. Revegetation will follow completion of the grading work, and it is hoped that this project will be completed by the spring of 2005.

Mr. Cabanas stated with regard to "non-coal shaft closures," the latest project is the Beau Lane Shaft Project located in Jasper County in the Joplin area. This project involved the opening of a vertical shaft outside of a back door of a residence. The hole appeared to be about 50 feet deep. After the staff investigated the area, a contractor was obtained pursuant to the under \$3,000.00 project in order to expedite the work. The contractor

filled the hole with crushed rock. Mr. Cabanas stated a reinforced concrete cap was then placed on top.

Ms. Garstang asked whether the concrete was able to be tied into the rock?

Mr. Cabanas stated the opening was made a little bigger so that the concrete slab would be spanning the opening so that it wasn't sitting directly over the hole.

Mr. Cabanas stated regarding the "state coal bond forfeiture projects," work on Pits 15 and 17 at Missouri Mining in Putnam County is now complete. These projects consisted mainly of deep gully repair and pond renovation. The work at Pit 14 North is also complete and consisted of gully repair and distribution of a topsoil stockpile and pond modifications. At Pit 14 South, this work involves the removal of a pond and diversion system. The next project will probably be the Pit 12 area and will involve the reestablishment of a breached pond and erosion repair.

Mr. Cabanas stated under the "surety reclamation projects," work is ongoing at the Midwest Coal, LLC, Tiger Mine, in Bates County and is expected to be completed by spring 2005.

3. PERMIT ISSUES

Request for Hearing – Capital Quarries Company, Inc., Transfer Application from Staggborg Materials (Attachment 2). Mr. Zeaman stated the Program received a permit transfer application proposing to increase Capital Quarries Company's mining operation for an additional 50 acres in Gasconade County, just outside of Hermann, Missouri. The proposed mine operation time frame is to the year 2023. Upon the application being deemed complete, the company ran a public notice for four consecutive weeks in the local newspaper. The company also sent by certified mail a notice of intent to operate a surface mine to the appropriate planning officials and adjacent landowners. During the public comment period following the initial publication of the public notice, the Program received three letters concerning the proposed permit transfer, specifically, regarding blasting. The three letters requested that a public meeting be held to further discuss the permit transfer application. The Program contacted Capital Quarries to determine if they would be willing to hold a public meeting. They responded that it is company policy to initiate contact with individuals who express concerns with their mining operation as soon as it is brought to their attention. Therefore, the company formally and respectfully waives the right to convene a public meeting and, thus, the staff presents a request for a hearing before the Commission. The Land Reclamation Act addresses the issues of mining and the environment, public notification requirements, request for permit application material, and a request for a public meeting/hearing. The

department does not provide protection concerning blasting related issues or noise pollution. Mr. Zeaman stated the Program received a telephone call from one of the concerned residents in the area who indicated she would not be able to attend the meeting today. She also noted that Capital Quarries did detonate explosives at the mine site on November 4, and that if the company were to detonate explosives like they did on that date, there would be no problems. The resident indicated she did feel some vibrations, but the detonation did not cause any further troubles. The Land Reclamation Act requires that the Staff Director make a formal recommendation regarding the issuance or denial of an applicant's permit and also requires the Director to consider any written comments when making the notice of recommendation. After consideration of comments provided in letters, it is the Director's recommendation to issue the permit transfer application involving 50 acres in Gasconade County sought by Capital Quarries because the company has satisfied all the requirements of The Land Reclamation Act. Mr. Zeaman noted he had just received a letter from the persons requesting a hearing suggesting that the permit application approval be amended to consider some restriction or conditional operation so as to take into consideration the proximity of the residences, the nursing home, and the hospital with regard to blasting.

No representatives from the public were present.

Mr. Tommy Crouch, Capital Quarries, stated the company met with the concerned parties, and seismographs were set up at the hospital and the residences.

Mr. AuBuchon stated that placing of conditions on the permit would be outside of the realm of the Commission.

Mr. DiPardo suggested that the company work with the concerned parties and continue to be a good neighbor.

Mr. Ziehmer made the motion to support the Staff Director's recommendation to issue the permit transfer and deny the hearing request. Dr. Haddock seconded; motion carried unanimously. The Commission requested that a letter be sent to the company encouraging Capital Quarries to continue positive dialogue with the residents that are in the neighborhood and to address their concerns.

Request for Hearing – William D. Dawson, Inc., Permit Expansion Application

(Attachment 3). Mr. O'Dell stated the Program received a permit expansion application from William D. Dawson, Inc., in July 2004. The company proposes to obtain a permit expansion to mine limestone on an additional 48 acres for a total of 124 acres in

Franklin County at Union, Missouri. Mr. O'Dell stated the company proposes that the site will be in operation until March 31, 2105. The company published the public notice for four consecutive weeks in a newspaper with circulation in the area. During the public comment period following the initial publication of the public notice, the Program received one letter signed by 30 individuals/couples concerning the proposed permit expansion. The concerns in the letters included blasting, noise, and road safety. A public meeting was declined by the company. William D. Dawson, Inc., has completed all the requirements to obtain a permit expansion under The Land Reclamation Act. Therefore, after consideration of the issues and comments stated in the letter, the Staff Director recommends issuance of the permit expansion involving the site located in Franklin County. The recommendation for approving this application is based on the conclusion that the public's health, safety, or livelihood will not be unduly impaired by the issuance of this permit. The balancing test stated in the declaration policy of The Land Reclamation Act does not weigh against the surface mining of minerals in this instance. Therefore, the recommendation is to approve this application.

Mr. Curtis Heider, Environmental Engineering Consultants, stated he assisted with the preparation of the expansion permit application and that the Planning and Zoning of Franklin County held a public hearing regarding this permit expansion and have unanimously approved the conditional use permit for the expansion.

No interested party from the public was present.

Ms. Garstang made the motion that the Commission move forward on the Staff Director's recommendation to issue the permit expansion for William D. Dawson and deny the request for a hearing. Dr. Haddock seconded; motion carried unanimously.

Request for Hearing – Continental Cement Co. LLC, Permit Expansion Application (Attachment 4). Mr. O'Dell stated the Program received a permit expansion application in September 2004 to mine clay on a new 2-acre site located in Gasconade County near Owensville, Missouri. The company proposes that the site will be in operation until January 31, 2014. The company published the public notice for four consecutive weeks in a newspaper that has circulation in the area. The company also sent, by certified mail, a notice of intent to operate a surface mine to the appropriate county officials as well as adjacent landowners. During the public comment period following the initial publication of the public notice, the Program received one letter concerning the permit expansion application for Continental Cement. The concerns addressed in the letter were blasting, timing of excavation, and safety. Continental Cement has completed all the requirements to obtain a permit expansion under The Land Reclamation Act. Therefore, after consideration of the issues and comments stated in the letter, it is the Staff Director's recommendation to issue the permit expansion involving the site located in

Gasconade County sought by Continental Cement. Mr. O'Dell stated the recommendation for approving this application is based on the conclusion that the public's health, safety, or livelihood will not be unduly impaired by the issuance of this permit. The balancing test stated in the declaration policy of The Land Reclamation Act does not weigh against the surface mining of minerals in this instance; therefore, the recommendation is to approve this application.

Mrs. Cheryl Hoffman stated her main concern regarding this operation is the children in the area. The clay mine will be in the middle of a subdivision. The pit will be less than 50 yards off her back yard property line and less than 100 yards from her grandchildren's swing set. She stated her husband sleeps during the day, and a mining operation that close to her home will not allow him to sleep in their home. She stated that is totally unacceptable to her. If the clay mine is dug and there are pilings of materials around the hole, if it is piled to her side of the hole, that runoff will run down her yard and down the driveways. That is the least of their concerns. She noted she and her husband had just built a \$300,000.00 home in the Owensville city limits. That clay pit will be less than 200 yards from her back door, and any blasting will run through that rock and do damage to her house. She indicated she would have the home surveyed for any cracks and any damage documented; and if anything happens to the house or the property because of this clay pit, she stated she will take legal action. She stated her main concern is for her grandchildren. She stated she and her husband did not move into the city limits in order to have a clay pit practically dug in her back yard and have to fence in their beautiful property in the woods to keep the children from falling into a clay pit. She noted she saw a 50-foot hole in the back of a person's property from an old mine shaft and that the clay pit will be deeper than 50 feet. Who is responsible for keeping all of the children out of this area away from the equipment. She noted she did not feel she should have to do that. If the company is going to dig that hole, they should have to keep the children away from that area.

Ms. Garstang asked if the pit location is within the city limits of Owensville?

Mrs. Hoffman replied no. She stated their back property line is the city limits.

Ms. Garstang asked if there was any mining that has already occurred--is this a pit that has been opened at one time?

Mrs. Hoffman stated the area is a vacant field and probably less than 300 yards from her property line to the next house behind her, so she is talking about a field between these two homes and there is a row of houses there and then a row of houses in her subdivision. She was not sure what is going on up at the other end of her subdivision. She has noticed Continental Cement trucks in that area. It appears the company may be starting to open a pit there. She noted that was not her concern.

Mr. Powell, Continental Cement, stated he shared Mrs. Hoffman's concerns. The trucks that were recently by her house--he was hired by the subdivision developer to do some grading on a lot adjacent to her house. He stated proximity with houses and clay pits is not an uncommon occurrence. Clay pits are usually short-lived for the landowner, and his company does have sympathy for the landowner. He would not want one in his back yard either. He stated the company does its best to get in and out as quickly as possible and tries to get along with everyone. He noted if Mrs. Hoffman is 125 feet from her back door to the property line, it is an additional 200 feet to the edge of the clay pit. He stated he has mined a clay pit about 170 feet from a home, and no damage occurred to that home. He stated the company does not do blasting hardly at all anymore. He stated the company has eliminated about 95 percent of its blasting. The company uses a hydraulic excavator, and the most noise that will be heard is the first bucket of the clay pit in the empty truck. There will be approximately 24 loads per day out of that pit. He stated it should take 60 working days (not considering weather) from stripping, with reclamation to be completed in about one year. He stated the clay pit was purchased in 1993. He stated the company does not want to be mining in the middle of a subdivision. The pit is not exactly in the middle of a subdivision. The adjacent property to Mrs. Hoffman on which the clay pit is located has five rental trailers, two rental houses, and the landowner has a couple of houses there also. The landowner is anxious to get the mining done and over with. Mr. Powell stated the company will do everything it can to keep any child or adult out of the area. Post-mining, should it become a lake, the option to backfill this is not out of the question. Most likely, it will be a lake; and if so, the company will slope the sides down to a 3:1 slope to the point where a 6-foot adult would be swimming before he would walk to an abrupt edge where there would be a drop to the bottom of the pit. The depth of the pit, the size of the pit, 50 feet would probably be the bottom of the pit. Mr. Powell stated he did not feel there was any way that any runoff (storm water) from the pit activity will run into Mrs. Hoffman's yard. The topography does not lie such to facilitate that.

Mrs. Hoffman stated that leaving the pit as a lake is totally unacceptable to her with children in the area. Noise of any kind for someone to sleep during the day is also totally unacceptable.

Ms. Garstang stated she noted in the information provided to the Commission that the notice to mine states that the site will be in operation until 2014, but is the company expecting to be finished before that time?

Mr. Powell stated from beginning to reclamation should be about one year. The reason the company asks for a longer period is that this will allow for a 10-year release. The area has fairly poor soil to work with so it takes a while to get things done. That date would eliminate any revisions and public notification.

Mr. DiPardo asked if the landowner wants the pit turned into a lake, are there any zoning laws that prohibit lakes that close to the city limits? Or, if the landowner wants the pit turned into a lake, it would be his call?

Mr. Powell stated the surface acreage of the pit is about 1/3 of an acre, and it is pretty much a circle looking down on it. The resulting body of water would probably be approximately 1/2 acre.

Mr. Coen asked Mr. Powell if he knew what the wishes of the landowner were--does he want a lake or backfilled?

Mr. Powell stated the landowner wants to get the project done. The landowner wanted to get it done several years ago, but the company was not able to do it then. The landowner would rather have it backfilled and wants the company to affect as little ground as possible because he would like to put more rental property back there.

Mr. Coen asked if the property owner wants the pit backfilled and the neighbor wants it backfilled, would that affect the company's decision?

Mr. Powell stated it can.

Mr. Coen asked, assuming a permit is issued, does the company have a start date in mind?

Mr. Powell stated the company would want to start the project in late spring of 2005 and have the reclamation taken care of by the fall.

Mr. DiPardo noted it appeared that the landowner does not want a lake?

Mr. Powell stated that the landowner indicated that if were to be left as a lake, he would want it to be as small as possible. However, there is not any material available in enough quantity nearby to backfill it. He would have to haul in material from another area.

Mrs. Hoffman asked if was possible to deny a permit for this site, but approve a permit for other sites?

Mr. Coen stated, mechanically speaking, yes the Commission can issue a permit for some sites and not others. But if a company requests that this site be permitted, the Commission just can't turn them down. It would have to be decided by the Commission on the basis of health, safety, or livelihood. It would also have to be on the basis of the result of a hearing on health, safety, or livelihood.

Mr. AuBuchon stated he agreed with Mr. Coen.

Ms. Garstang made the motion that, in the light that it appears that the company has met the requirements to issue a permit, that the Commission agree with the staff's recommendation to permit the expansion and deny the request for a hearing. Dr. Haddock seconded; motion carried unanimously.

Mr. DiPardo suggested that the company do everything it can to make the operation go as smooth as possible.

4. ENFORCEMENT

W. A. Dillon Clay Mining Company, Permit Revocation and Bond Forfeiture

(Attachment 4). Mr. Larsen stated the company was issued a Notice of Violation earlier this year for failure to reclaim a clay pit within the time frames specified in the regulations. The operator has failed to complete the necessary reclamation. At the July 2004 meeting, the Commission approved and signed a Formal Complaint concerning the operator's failure to abate the violation. The operator has been unresponsive in either abating the violation or requesting that a hearing be held. The Complaint specified that a failure to either abate the violation or request a hearing could result in the revocation of the mining permit and forfeiture of the bond associated with that permit. Subsequent to the receipt of the Formal Complaint, the staff, on behalf of the Commission, did send certified mail to the operator allowing the operator one final 30-day period in order to request a hearing prior to the staff requesting the Commission forfeit the bond. It is the operator's right to request a hearing before this action is taken. As of this date, the operator has not requested a hearing. Therefore, it is the staff's recommendation that the Commission revoke Permit 0242 issued to W. A. Dillon Clay Mining Company and request the Attorney General's Office to proceed with the collection of the bond associated with this permit. It is apparent that the operator has no ability to abate this violation or continue in the business of clay mining. The operator has indicated to staff that this action is uncontested and will not fight the revocation of the permit and forfeiture of the bond in the amount of \$9,000.00.

Dr. Haddock made the motion that the Commission follow the staff's recommendation to revoke the permit and refer for collection of the bond for W. A. Dillon Clay Mining Company. Mr. Ziehmer seconded; motion carried unanimously.

S & S Quarries, Inc., Formal Complaint (Attachment 5). Mr. Larsen stated the company was issued two Notices of Violation in July 2004--one for failure to permit and bond all affected acres and another for failure to control erosion and off-site sedimentation. Abatement of both violations was due by August 4. A follow-up

inspection of the mine site on August 12 indicated that no work had been completed in order to abate the violation addressing off-site sedimentation. Mr. Larsen stated that, as of this date, no additional permit materials or bonding have been received by the staff in order to add additional acres affected. On October 13, 2004, an informal conference was held with the Staff Director to discuss the facts of the violations and proposed penalty assessments. At that time, it was revealed that the current permittee has contracted with an individual to conduct all mining and reclamation activities at the site. The operator stated that he has "lost all control" over this individual with respect to compliance at the mine site and is unable to abate either Notice of Violation. The operator is aware that failing to abate a violation will result in the filing of a Formal Complaint, and he is in agreement with the process and fully understands the consequences of a Formal Complaint and failing to remedy a Notice of Violation. Therefore, it is the staff's recommendation that, since the permittee has neglected to abate the Notices of Violation and that no action will be taken towards abatement, the Commission sign the Notice of Formal Complaint for failure to abate the two Notices of Violation and notify the permittee that a Formal Complaint has been filed against him and that he has 15 days to either request a hearing, abate the violations which are the basis of this Formal Complaint, or take no action which will result in a recommendation to the Commission at its regularly scheduled Commission meeting to either suspend or revoke Permit 0482 issued to S & S Quarries, Inc.

Mr. Ziehmer made the motion that the Commission sign Notice of Formal Complaint and notify the permittee that a Formal Complaint has been filed. Dr. Haddock seconded; motion carried unanimously.

Trager Limestone, L.L.C., Formal Complaint (Attachment 6). Mr. O'Dell stated an inspection of the Gallatin Quarry was conducted in September 2003. At that time, the operator was informed that the operation was out of compliance with several issues and that they needed to be corrected. A June 2004 inspection revealed that none of the previously noted deficiencies had been corrected. As a result, in July 2004, two Notices of Violation were issued--one for failure to obtain a Land Reclamation Permit prior to affecting land as part of a surface mining operation and the second for excavating an area within approximately 10 feet of the edge of a county public road without first obtaining a variance to do so. Abatement of the two violations was due by August 3, 2004. Abatement requirements for the first violation were to cease all operations on areas not currently permitted, submit a complete and accurate permit amendment application, and respond to all written staff comments. Abatement requirements for the second Notice of Violation were to submit a letter from the local county road authority that stated what type and size of a safety barrier would be satisfactory to them to be placed along the county road while still meeting the minimum height requirement of 3 feet required by the regulations. The operator was required to then construct the safety barrier and backfill

the excavation area contained in the violation to the approximate original contour while maintaining free drainage and ensuring that all slopes are traversable by farm machinery. Mr. O'Dell stated an inspection conducted on September 1, 2004, revealed both violations remained unabated. On September 7, 2004, the staff contacted the operator and informed him that both violations remained unabated and explained what needed to be done to properly abate them. A certified letter was received by the operator on September 13, 2004, explaining what needed to be done to abate the violations. Inspections conducted on September 22 and October 19, 2004, revealed both violations remained unabated. As of this date, both violations remain unabated. Numerous other phone calls have been made in an attempt to bring the operator into compliance. Therefore, it is the staff's recommendation that, since all time frames for appeal of both Notices of Violation have expired and the operator has neglected to perform the required remedial actions as stated in the Notices, the Commission sign the Notice of Formal Complaint for failure to abate the two Notices of Violation and to notify the operator that a Formal Complaint has been filed and that he has 15 days in which to request a hearing or to remedy the basis of the Formal Complaint.

Dr. Haddock made the motion that the Commission sign the Formal Complaint for failure to abate the above two Notices of Violation and to inform the operator that a Formal Complaint has been filed. Ms. Garstang seconded; motion carried unanimously.

5. BOND RELEASES

Coal: (Attachment 7)

Mr. Hall noted the Office of Surface Mining (OSM) processed these bond releases for the State of Missouri.

Associated Electric Coop., Inc., NEMO Mine, Permit 1983-17, PP-02-07: This release request is for Phase II and III release on 27.5 acres for a release amount of \$6,000.00 and Phase III release on 327 acres in the amount of \$163,500.00.

Associated Electric Coop., Inc., NEMO Mine, Permit 1982-01, PP-03-09: This release request is for Phase II and III release on 265.5 acres for a release amount of \$132,750.00 and Phase III release on 369.5 acres for the release amount of \$218,500.00.

Mr. Hall stated Phase III is a final release to the company. He stated the hydrologic review for both release requests determined there were no problems with ground water or surface water quality associated with mining activities that took place on the areas being requested for release. Vegetation success standards have been reviewed and approved by the Office of Surface Mining.

Mr. Hall stated the Office of Surface Mining has determined that Associated Electric Cooperative, Inc., has completed reclamation of the above areas proposed for release in accordance with Missouri's regulations and the applicable permits and plans. Therefore, it is the Office of Surface Mining's recommendation that the Commission approve the above releases for reclamation liability as presented.

Ms. Garstang made the motion that the Commission approve the above two bond release requests as presented for Associated Electric Coop., Inc, at the NEMO Mine. Dr. Haddock seconded; motion carried unanimously.

Mr. Hall noted that Associated Electric has gone to a self-bonding scheme. Even though there is a dollar figure given, there is no money released. When the Office of Surface Mining refigures the company's bonds, which it does on an annual basis, it will be recalculated with these releases figured into it.

North American Resources, Silver Creek Mine, Forfeiture Site Liability Release (Attachment 8). Mr. Hall stated that on February 5, 1998, the Commission revoked North American Resources' Permit 1993-01 and declared forfeited bonding provided by the New York Frontier Insurance Company. Subsequent to the permit revocation, on November 17, 1999, the Commission entered into an agreement with the bonding company to complete the reclamation in lieu of bond collection. However, following that, the insurance company failed in business; and the New York Division of Insurance was ordered to conduct Frontier's business on their behalf, which has been done under the name of "Frontier Insurance Company in Rehabilitation (FIR)." This company has been conducting the reclamation at the Silver Creek site since that time. The reclamation plan divided the Silver Creek site into three reclamation subunits. FIR has completed reclamation on the southernmost unit and has requested reclamation liability release on this area. The release request is a request for a final liability release on 20 acres of land that were affected by mining and a complete unaffected release on 18 acres that were not touched by mining activities. The release amount associated with this application is for \$140,000.00. The application for release was submitted, and the public notice for the proposed release was published in a newspaper in the vicinity of the mine site. The public comment period expired on October 13, 2004, and no comments from the public have been received. No written comments from landowners have been received. However, one landowner, Mr. Walter Cross, did contact the Program and indicated that he wished to have the surety perform upgrades on buildings left on his property. Mr. Hall noted that the original reclamation plan issued to North American Resources called for all these structures to be removed upon reclamation. Most of the structures were deemed to be unusable due to disrepair or were not useful for the intended postmining land use. However, it was at the insistence of Mr. Cross that the structures remain on this site. The reclamation plan was subsequently revised by the consultant working for FIR to leave

these structures on the site. Mr. Hall stated Mr. Cross was advised to submit his comments to the Program in writing, but no written comments from Mr. Cross have been received. The Program staff has determined that the grading has been completed on the area, and erosion is being controlled. Several structures remain on the site in varying degrees of repair. These structures include coal processing buildings, electrical building, a scale house, a scale pit (the scale itself has been removed), petroleum storage building and confinement structure, slurry decant cells, coal hopper, and concrete pad and foundation pillars for the metal structures. One sediment pond is being left as a permanent structure. The pond dam is in good repair, and the water is of acceptable quality. Much of the area has an industrial land use and is surface with rock or concrete slab. The landowner has been cropping portions of the area, and although the original reclamation plan called for a grass cover in these locations, the land use has been converted to cropland to accommodate the landowner's wishes. The other vegetated areas outside of what is concrete or gravel pad or is being cropped are vegetated with mature grass covers capable of controlling erosion. Mr. Hall stated it is the staff's determination that the surety has completed reclamation required of it in accordance with the approved reclamation plan as it was revised to reflect the landowner's desires. Therefore, it is the staff's recommendation that the Commission release Frontier Insurance Company in Rehabilitation of further reclamation liability on the south reclamation unit at the North American Resources' Silver Creek Mine and to waive collection of bond in the amount of \$140,000.00. The bond will remain in effect to secure reclamation on the two remaining geographic units at this site.

Mr. Cross, the landowner, stated he originally had not desired that anything be reclaimed because he could use the haul road and buildings. He noted the lease he had with the mining company was to leave all buildings. However, it appears that that was not the plan according to the company's permit. The equipment was removed. There is a safety issue in that he cannot keep what buildings are left secure such as keeping curious people from climbing up the steel stairways on a building that is about 80 feet tall.

Ms. Garstang asked if it was normal where a property owner would have a separate contract with the mining company that is independent of a permit?

Mr. Coen stated that in most cases that is true. The company would have a lease such as payment of royalties. He was not sure whether it would be normal for a bonding company to have a separate agreement with the property owner. The Program would probably not know anything about that.

Mr. Cross stated he purchased the land in 1989 after the current mining company took it over from the previous mining company. North American Resources did not do any mining on it. They removed some stockpiled material, and after the material was

removed, under the local conservation, Mr. Cross stated terraces were put in per the conservation's specs and plans.

Mr. Hall stated that in the coal permitting process, the Program requests a showing by the mining company that they have the authorization to mine the coal. That is all that is required in the permitting process. The Program does not get involved with the specific terms of the lease. If North American Resources had something in a contract with Mr. Cross to leave the buildings, the Program would not necessarily know that. The Program only knows what is in the operation and reclamation plans presented to it by the mining company. Mr. Hall noted that it has been very typical over the years for a company, for example, to get a permit showing several temporary sediment ponds. But when it comes to release time, the company may not want to spend the money to take the ponds out, so it may revise the permit to leave those ponds. He stated he did not know if North American Resources had that in mind when they formulated a contract or lease agreement with Mr. Cross to revise the permit and leave the buildings. Since North American Resources did not complete reclamation, the Program would never know this. The Program has had to deal with the surety company, and all the surety company knows is what was approved in the mining company's permit and reclamation plan. In this instance, the reclamation plan showed that the buildings were to be removed. He stated that is what the surety company was willing to do until Mr. Cross indicated he wanted the buildings and structures to remain. So the surety company modified their reclamation plan to show them as remaining. It is the staff's understanding that there is no regulatory authority that makes us tell the surety company that they have to go back now and upgrade those buildings. That is not an obligation the staff can require the surety company to do. The buildings are not in very good repair. Mr. Hall stated it is the staff's opinion that they cannot ask the surety to spend money on that when the structures were left at the landowner's desire to begin with.

Mr. Cross stated he felt he saved the surety company considerable money by utilizing the haul road and the concrete slab. The main building he is concerned about is not the old building, but the newer tall building. It just needs some siding put back on it.

Dr. Haddock made the motion that the Commission follow the staff's recommendation to release the reclamation liability in the amount of \$140,000.00 for this project at the Silver Creek Mine. Mr. Ziehmer seconded; motion carried unanimously.

Yates Energy & Development, East Pit, Liability Release, Permits 1982-31 and 1982-16 (Attachment 9). Mr. Cabanas stated this liability release request involves 213 acres located in Randolph County. The site was mined by Yates and reclaimed by the Land Reclamation Program. The other areas mined by Yates are located to the west. All permits issued to Yates were revoked by the Commission on February 26, 1987.

Reclamation of the East Pit was initiated in 1995 and completed in 1996. Mr. Cabanas stated maintenance was ongoing until 2002. All areas have been graded to approximate original contour, and all available topsoil materials have been redistributed. The area has been seeded to a cool season grass/legume mixture. Problematic drainage areas have been stabilized by using rock structures. Persistent acid/toxic areas have been covered with layered crushed limestone. All ponds and embankments are in good repair, and discharges that have occurred have been of acceptable water quality. The land uses for the site are 206.5 acres in pasture and 6.5 acres in water impoundments. The total bonding collected for the East Pit was \$160,500.00. Since the West Pit was also included in the total bid with the East Pit, it is not possible to project the total cost of the East Pit. The total spent on the two pits was \$2,027,449.87. The amount of bond collected from the forfeiture of all permits for Yates was \$342,500.00. This would leave the amount of \$1,684,949.87 that came from the Coal Mined Land Reclamation Fund for the two areas. All landowners were contacted by certified mail regarding the proposed release, and a public notice was run in a newspaper in the area for 30 days. No written comments were received. Mr. Cabanas commended the Land Reclamation Program staff for the good job they did regarding this project and the cooperation of the landowners. Therefore, it is the recommendation of the staff that the Commission release the reclamation liability on 213 acres at the East Pit for Yates Energy & Development Company for Increments 1, 2, and 3 of Permit 1982-16 and Increment 7 for Permit 1982-31.

Mr. Ziehmer made the motion that the Commission release the reclamation liability on 213 acres under Permits 1982-16 and 1982-31 at Yates Energy & Development Company. Dr. Haddock seconded; motion carried unanimously.

6. OTHER BUSINESS

Resolution-Rebecca Buechter. Mr. Coen noted that a Resolution had been prepared and signed by the Commission for Rebecca Buechter, who had resigned, for her efforts on behalf of the Commission and the State of Missouri.

Adoption of Proposed Land Reclamation Commission Meeting Schedule for 2005 (Attachment 10).

Ms. Garstang made the motion the Commission accept the proposed dates for future Land Reclamation Commission meetings for the calendar year 2005. Dr. Haddock seconded; motion carried unanimously.

Commissioners' Core Work Group Recommended Operating Policies (Attachment 11). Mr. Coen noted that each of the Department of Natural Resources Commissions have been asked to work out draft Commission Operating Policies to be adapted to the

respective commission. Mr. Coen stated there are still four items that need guidance by this commission to determine how it wants the language to read. He noted the following issues:

Under item 3 - Officers under "Commission Structure," he stated the law does require that the Commission elect a chair and a vice chair on an annual basis. The law does not give any instructions on how to do that, so this policy would outline how this would be done. In the past, officers have been elected from the public members. This would give the appearance of a more open and objective process. There is nothing legally that would require the Commission to narrow the officers to the public members only.

Mr. DiPardo stated he was satisfied with the process which has been used in the past.

Ms. Garstang stated she was satisfied with either limiting the elected officers to the public members or leaving it totally open.

Dr. Haddock suggested that at least one of the officers should be a public member.

Mr. Ziehmer stated that it appears that the process that has been in place for years has worked very well. Whatever goes into guidelines or policies should not contradict statute and create a situation that should never have happened.

It was felt that this process should continue as in the past.

Ms. Garstang asked whether the Commission had ever filed a biennial report with the Governor (item (14) under 1. Authority and Powers)?

Mr. Coen replied yes. The report has been a requirement of the coal program. The last report was published on the Web page, not in hard copy.

Ms. Garstang asked when the policy talks about members, there is no mention of the possibility of designating an alternate. She noted she has done this and Mr. Hull has done this. Should this not be included?

Mr. Coen noted it was not part of the draft package for all of the commissions, so, perhaps, all of the commissions should look at that issue.

Ms. Garstang asked regarding "Agendas," how the other commissioners felt about designating something that may not be eligible to be placed on the agenda unless the information is received so many days in advance of the meeting?

Mr. Coen stated the Program already has a policy on that. It could possibly be drafted into the policy. The Program's policy is that the Commission needs to get something included by the beginning of the month in which the meeting is held.

Ms. Garstang noted that there have been instances where the Commissioners were provided large amounts of materials with a very short time frame in which to review it.

Mr. Coen stated the Program's policy is basically for when the public wants an issue to appear on the agenda for the next Commission meeting. He noted that in the instances referred to by Ms. Garstang, they were legal issues, and the time frames were such that no one could control them.

Ms. Garstang noted her concern that the Commissioners be able to prepare themselves properly to hear an issue, so that when an issue is presented at the meeting, the public is present, and then not being able to address the issue. She stated she would like to see something in the policy that at least recommends some sort of a cut-off or decision point prior to the meeting just so the public knows yes or no the issue will be addressed and that the Commission has some time to make sure it is prepared.

Mr. Coen stated he would add what the current Program policy is. His concern is that in all of the instances referred to by Ms. Garstang, the issue was placed on the agenda far in advance, and the materials were not available in time to get them to the Commission. If the staff had waited until the materials were received, then the issues could not have been placed on the agenda. It would then increase the time before the issue could be brought before the Commission.

Ms. Garstang suggested that the issue be placed on the agenda, but should the Commission not have the materials, say five days in advance, then it would not be considered at the next meeting. The Program staff would then contact the public to let them know that it would not be considered.

Mr. Coen asked if five days was enough time or should it be more?

Mr. DiPardo stated he did not feel five days was enough time.

Ms. Garstang suggested it could be stated "a reasonable amount of time, no less than a certain amount of days."

Dr. Haddock asked if the Commission had the ability to refuse to look at an issue because it feels it did not have enough time?

Mr. Coen stated the Commission does have that ability. In the past, the Commission has tabled issues which it felt it did not have enough information on or did not have enough time to review the materials. The problem with this is that the public has shown up only to find out the Commission has decided to table the issue to another meeting.

Dr. Haddock stated he like the wording "reasonable, no less than."

Mr. Coen stated under "'Conduct of Meetings," the suggestion is that the Commission conduct meetings by Roberts Rules of Order. He noted that the Commission does this in principle.

Dr. Haddock noted that Roberts Rules of Order can always be trumped by whatever could be written in bylaws. He noted that by Roberts Rules of Order, the Chair does not vote. Is it stated in the policy that the Chair can vote?

Mr. Coen stated that one of the reasons there are seven members on the Commission is so that there can't be a tie, which would mean the Chair would have to vote.

Dr. Haddock stated that, according to Roberts Rules of Order, it is acceptable for the Chair to vote if there are bylaws that say the Chair can vote. Strictly by Roberts Rules of Order, the Chair can't vote. So the Commission would have to specifically state in this policy that the Chair is a voting member.

Mr. DiPardo agreed.

Ms. Garstang stated she felt it would be better to have it be left as informal and not specifically stating that the Commission will go by Roberts Rules of Order.

Mr. Coen stated he would put in the policy that the Commission would use Roberts Rules of Order as a guideline, but that the meetings would be held informally and that the Chair votes.

Dr. Haddock noted the policy could state that the Commission would be following general parliamentary procedure and not quote Roberts Rules of Order.

Mr. Coen stated that under "Appeal Hearings and Decisions," under item 18, Decision After Hearing, the policy states "The commission shall provide a reasonable time for oral argument upon the request of any affected parties." This is after the Hearing Officer has made the finding and the Commission has been presented Findings of Fact and Conclusions of Law and Order. Does the Commission want to give the parties the opportunity to argue the hearing again?

Mr. Ziehmer stated he would have to say no. In the policy, it is noted that the parties have been through the entire process and it also states that the Commission's decision shall be based on the hearing of the facts. According to the policy, the parties could speak again and give oral testimony, but he as a member of the Commission would have to make a decision based on the facts. He did not see a benefit for either side to be heard again.

Mr. Coen noted the suggestion in the policy is to give everyone appealing that they got one last time to express themselves. It really doesn't count.

It was felt that the current process of the Commission making a decision on the facts and not allowing for additional comments prior to the Commission's final decision should be continued.

Mr. Coen stated under item 21, "Commission Web Page," there is a Web page for the Commission.

Mr. Ziehmer asked what type of information is on the Web--such as home address?

Mr. Coen stated that type of information is not on the Web. There is a page about the Commission, but not that kind of information. Some members of commissions feel that they should put that information on the Web so that they are more accessible to the public.

Mr. Ziehmer stated he felt there was value in having names and contact information on the Web for commission members. He stated his recommendation would be to include names and a work address. He stated if he receives information, this policy would dictate how he needs to share it with the rest of the Commission and the Staff Director.

Mr. AuBuchon noted that if the Commission gets contacted regarding ongoing litigation or a specific case or proposed rules, to make that a part of its record on its decision. Having ex parte communications about a particular matter that is not brought to the attention of the other commission members may result in an adverse finding of the court regarding the Commission's decision not being made on the whole record.

Dr. Haddock asked for a scenario regarding this situation.

Mr. AuBuchon stated it would be a situation where the Commission has a hearing that is coming forth and a commissioner gets contacted by one of the interested parties outside of the Commission meeting, it would be best to produce that conversation to writing and acknowledge that the commissioner had a conversation outside of the Commission

meeting, with whom, what time, and discuss the nature of that conversation so that the rest of the Commission can have the opportunity to comment on it.

Dr. Haddock asked if it should be sent to the Program for distribution to the rest of the Commissioners?

Mr. AuBuchon stated that would be the way.

Ms. Garstang asked if Mr. AuBuchon was designating only if the Commission is at the point of a hearing?

Mr. AuBuchon stated it is also very important for a proposed rulemaking. Any time the Commission has a decision to make, the penalty based upon whatever is to be concerned as the public record, it may be best to do that. There is no prohibition on being contacted, so long as the conversation is disclosed to the rest of the Commission and the public.

Ms. Garstang asked what about conversations between Commissioners?

Mr. AuBuchon stated you can't have more than two.

Comments From the Public

There were no comments from the public.

Mr. Larsen noted that a special teleconference Commission meeting will need to be held sometime in the first part of December in order to adopt an Order of Rulemaking following the public hearing on the Industrial Minerals 453 Rules being held this afternoon. The January meeting date will come after the time for filing of the Order with the Joint Committee on Administrative Rules. The Commission would need to keep this time frame in mind for a date, hopefully, prior to December 15.

Closed Session. Dr. Haddock made the motion that the Land Reclamation Commission meet in Closed Session at 8:30 a.m. on January 27, 2005, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Ms. Garstang seconded; motion carried unanimously.

Adjournment. The meeting was adjourned at 12:20 p.m.

Respectfully submitted,

Chairman